

REMARKS/ ARGUMENTS

Applicant has carefully studied the final Examiner's Action mailed July 2, 2007, having a shortened statutory period for response, with extension, set to expire October 2, 2007. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by Office, to ensure full response on the merits to each finding of Office.

Claim Rejections - 35 U.S.C. § 112, paragraph 1

Applicant acknowledges Office contends claim 5 is rejected as the specification does not satisfy 35 U.S.C § 112, first paragraph. The first paragraph of 35 U.S.C § 112 requires the specification describe how to use the invention such that an individual skilled in the art may use the invention without undue experimentation.¹ The level of guidance is dictated by the amount of knowledge associated with the art and predictability of the art.² Office has the initial burden to provide a reasonable reason to question the invention.³ Also, enablement does not depend on whether an invention is working or prophetic.⁴

Office contends claim 5 fails to comply with the written description requirement, because claim 5 stems from new subject matter not described in the specification.⁵ However, Office has not shown how claim 5 requires undue experimentation or fails to stem from the specification. Moreover, Applicant has withdrawn claim 5, and therefore renders Office's objection moot.

Accordingly, Applicant respectfully requests Office's objection to claim 5 be withdrawn.

Claim Rejections - 35 U.S.C. § 112, paragraph 2

Applicant acknowledges the quotation of 35 U.S.C. § 112, second paragraph. Claims 1,3,5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for

¹ MPEP 2164. MPEP 2164.01, citing *In re Wands*, 858 F.2d 731.

² MPEP 2164.03.

³ MPEP2164.04.

⁴ MPEP 2164.02.

⁵ Office Action, dated December 28, 2004, page 2, paragraph 4.

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failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant has withdrawn claims 1 through 5, and drafted claims 6 through 14 to better enunciate the subject matter claimed in those limitations. As such, applicant respectfully requests Office withdraw its rejection of claims 1 and 5 under 35 U.S.C. § 112.

Claim Rejections - 35 U.S.C. § 103

Applicant acknowledges Office has rejected claims 1, 3, and 5 under 35 U.S.C. § 103(a), as being obvious over Sperry, et al. (U.S. Pat. 6,253,919) in view of Hollingsworth, et al (U.S. Pat. 6,334,534).⁶ For prior art to invalidate a patent application, the art must suggest or motivate an individual to modify or combine prior art to reach the invention, provide a reasonable expectation of success, and teach or suggest all the claim limitations.⁷ For art to implicitly suggest a specific combination, the combined knowledge of the field, with “the nature of the problem to be solved as a whole[,] would have suggested to those of ordinary skill in the art” to combine the references.⁸ Further, the prior art must be reviewed as a whole, including parts that teach away from the invention.⁹ Finally, even though all aspects of the invention are taught, the invention is not per se obvious.¹⁰

Applicant has withdrawn claims 1, 3, and 5, and therefore Office's rejection has been rendered moot.

⁶ Office Action, dated Dec. 28, 2004, page 3, paragraph 7.

⁷ MPEP 2143.

⁸ MPEP 2143.01(I).

⁹ MPEP 2143.03(VI).

¹⁰ See, MPEP 2143.01(IV).

Conclusion

Entry of a Notice of Allowance is solicited. If Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 925-8505 is requested.

Very respectfully,

SMITH & HOPEN

By: 

Dated: November 12, 2007

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CERTIFICATE OF MAILING

(37 C.F.R. 1.8 (a))

I HEREBY CERTIFY that this Amendment F, including Introductory Comments, Amendments to the Claims and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3728, Attn: Shian Tinh Nhan Luong, (571) 273-8300, on November 12, 2007.

Dated: November 12, 2007



Lauren Reeves